IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO.409 OF 2004

IN

WRIT PETITION NO.2331 OF 2004

M/s.Excel Ice Services & Anr. .. Appellants

Versus

MSEB and Ors. .. Respondents

Mr.Ramrao Adik, Senior Counsel with Peter Lobo for appellants

Mr.P.P.Chavan with Kiran Gandhi i/b. Little & Co. for respondents.

CORAM : A.P.SHAH AND

S.C.DHARMADHIKARI, JJ.

**DATE : 4TH OCTOBER 2004.**

P.C.

1. This letters patent appeal impugns the

order passed by a Single Judge of this Court in the above writ petition on 30th August 2004. The petition was directed against an order passed by first respondent herein on 10th September 2003 and a communication dated 21st October 2003. (Exh.P and N to the original petition). By an order of 10th September 2003, it was held by the appellate authority that there was illegal abstraction of electrical energy by petitioners. Accordingly, assessment was done by the appellate authority with the factors mentioned in details in the said order. The appellate authority, after hearing petitioners, has passed a speaking order giving reasons as to why it finds that the assessment which was made by Chief Engineer Vashi should be accepted. The appellate authority has noted the fact that whenever petitioners' metering installation was checked or inspected by the Testing staff, in the subsequent month, there is substantial increase in the consumption pattern. The figures are set out in the order of the appellate authority. The appellate authority has noted the fact that the assessment has been done by the Chief Engineer, Bhandup in pursuance of an order and direction of this Court.

2. The learned Single Judge has taken note of the grievances of the appellants herein, while challenging the order of the appellate authority. He has considered elaborately all contentions raised before him. He has assigned cogent reasons for rejecting each one of them including the one pertaining to exoneration of petitioner from a criminal case. After referring to the decision of the Supreme Court in the case of J.M.D.Alloys Ltd. Vs. Bihar State Electricity Board and Ors. reported in (2003) 5 S.C.C. 226, the learned Single Judge has noted that merely because criminal case has ended in acquittal, it does not *ipso facto* mean that case of illegal abstraction of electrical energy cannot be dealt with by the authorities exercising powers under the Electricity Supply Act 1948. The distinction between matters of assessment and charge in criminal cases of theft of electrical energy is noted in this decision and it is held that authorities are not precluded from exercising their powers including that of assessment and revision thereof. Parameters of judicial review have also been laid down in this decision

pertaining to cases of present nature.

3. That apart, the learned Single Judge has upon taking cognisance of one of the grievances granted liberty to petitioners to approach the appellate authority once again. This liberty was granted to canvass the issue of applicability of general circular (Commercial No.316).

4. After having heard Shri Adik, learned Senior Counsel appearing for petitioners and Shri Chavan, learned Counsel for respondent No.1 board, we find that this is not a case for interference in exercise of our jurisdiction under clause 15 of the Letters Patent. The learned Single Judge has noted all grievances including the one reinterated before us by Shri Adik. We find that the learned Single Judge has acted consistent with the parameters laid down by the Supreme Court in the aforesaid decision. The learned Single Judge has gone into materials necessary for appreciating the submissions while challenging the order of the appellate authority. We cannot be unmindful of the aspect of illegal abstraction of electrical energy by consumers

like petitioners herein. The appellate authority has referred to periodical visits and inspections and recorded a finding of fact that the assessment made provisionally by the Chief Engineer is required to be confirmed.

5. In exercise of powers of judicial review we, like the Single Judge, cannot interfere with such finding of fact which is recorded after considering all materials placed on record. We are not sitting in judgement over the decision of the appellate authority. That apart, we find that interest of justice is served by the opportunity granted by the learned Single Judge to approach the authority for redressal of the limited grievance.

6. In the result, there is no infirmity in the order of the learned Single Judge and the Letters Patent Appeal deserves to be dismissed. It is accordingly dismissed with no costs.

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